

V.

C

D

E

The 2nd, 3rd and 4th respondents ('said respondents') were retrenched by the appellant company and paid compensation thereof. However, the said respondents considered themselves dismissed without just cause or excuse and their representations were referred to the Minister for Human Resources (the 1st respondent). The Minister, in the exercise of his discretion, referred the matter to the Industrial Court (the 5th respondent) for a resolution under s. 20(3) of the Industrial Relations Act 1967 ('the Act'). Dissatisfied with this, the appellant applied to the High Court to quash the Minister's decision. The High Court dismissed the application. The High Court found that the representations made by the respondents were not vexatious and frivolous as they raised a serious issue for determination concerning the relationship between the appellant and the Esso companies in Malaysia. This was because it had a bearing on whether the said respondents could have been relocated in any of the other Esso companies in Malaysia (See [1999] 1 LNS 199). The appellant then appealed to the Court of Appeal. The High Court decision was upheld by a majority decision essentially on the ground that the said court was correct in holding that there was a serious issue to be determined which could only be resolved by the Industrial Court (See [2004] 1 CLJ 451).

The appellant then sought leave to appeal to the Federal Court that was granted on the following questions: A

- (1) Is the High Court under a duty to conduct a meticulous examination of the facts and documents put before the Minister when it is judicially reviewing his exercise of discretion under s. 20(3) of the Act regardless of whether it is a decision to refer or not to refer the matter to the Industrial Court; B
- (2) Is the High Court correct in stating that the Minister is obliged to refer the matter to the Industrial Court under s. 20(3) of the Act so long as he feels that there is a serious issue of fact and law which requires determination; and C
- (3) If the answer to (2) above is in the affirmative, has the Minister exercised his discretion correctly in the instant case. D

Held (dismissing the appeal)

Per Steve Shim CJ (Sabah & Sarawak) delivering the judgment of the court:

- (1) The phrase “meticulous examination of the facts” did not set any universal standard. It was not an inflexible term. It meant that there should be an objective examination of the factual matrix available before the Minister in order to ascertain whether a reasonable person, in similar circumstances, would have arrived at the decision which the Minister had done. The application of the principles laid down in the case of *Associated Provincial Picture Houses Ltd v. Wednesbury Corp.* required the court to undertake an objective appraisal or examination of the facts presented to the Minister at the material time. Therefore, it was in this context that the first question had to be answered. (para 3) E F G
- (2) If the word “feels” in the second question meant a finding or conclusion arrived at by the Minister on the available facts and documents before him, then so long as he had conducted an objective examination of those facts and documents in accordance with the legal principles laid down above, the Minister was under a duty to refer the representations to the Industrial Court. The representations must necessarily relate to the allegations made by the employees that they had been dismissed without just cause and excuse. This was implicit in s. 20 of the Act. Furthermore, the serious issue of fact and law must have relevance to the resolution of the dispute H I

- A between the employer and the employees arising from the representations. It followed that the answer to the second question had to be in the affirmative. (para 4)
- B (3) The document exhibited as “LAL 4” which significantly influenced the Minister to exercise his discretion to refer the representations to the Industrial Court seemed to indicate a connection between the Esso companies and the appellant. Given this scenario, there might have well been some understanding as to the absorption or relocation of retrenched employees of the appellant in certain circumstances. As such,
- C oral or documentary evidence would need to be led to establish this. It was in this context that the High Court held that the relationship factor raised a triable issue that ought to be ventilated and resolved in the Industrial Court. (paras 7 & 8)
- D
- E (4) A further factor that could have weighed upon the mind of the Minister was the existence of a common collective agreement as reflected in exh. GHT11. This collective agreement involved the appellant, the Esso Companies and the union. There might be a need to ascertain the extent and scope of this document in order to clarify the actual relationship between the parties concerned. Again, oral evidence would be required. (para 9)
- F (5) If some form of corporate relationship existed between the appellant and the Esso companies, this might well be sufficient to suggest that there was some understanding that the appellant should take all reasonable steps to re-deploy or relocate the respondents with any Esso companies in Malaysia in certain circumstances. Although there was documentary
- G evidence to show that the appellant made attempts to re-deploy the said respondents but failed, the respondents appeared to have disputed this or at least the extent of the attempt involved. As such, both oral and documentary evidence had to be led. It would therefore be in this context
- H that the Minister thought it fit to refer the representations to the Industrial Court. It followed that the Minister had acted reasonably and correctly in doing so. (para 10)

I

Bahasa Malaysia translation of headnotes

A

Responden-responen kedua, ketiga dan keempat ('responden-responen tersebut') telah diberhentikan kerja oleh syarikat perayu dan telah dibayar pampasan masing-masing. Responden-responen tersebut bagaimanapun menganggap diri mereka sebagai telah dibuang kerja tanpa sebab dan alasan yang sah, dan dengan itu telah mengemukakan representasi kepada Menteri Sumber Manusia (responden pertama). Menteri, dalam melaksanakan kuasa budi bicaranya, merujuk halperkara kepada Mahkamah Perusahaan (responden kelima) untuk suatu keputusan di bawah s. 20(3) Akta Perhubungan Perusahaan 1967 ('Akta'). Tidak berpuashati, perayu memohon kepada Mahkamah Tinggi untuk membatalkan keputusan Menteri. Permohonan bagaimanapun ditolak oleh Mahkamah Tinggi. Menurut Mahkamah Tinggi representasi yang dibuat oleh responden-responen tersebut tidak remeh atau menyusahkan kerana mereka sebenarnya telah membangkitkan satu isu serius untuk diputuskan, iaitu mengenai pertalian di antara perayu dan syarikat-syarikat Esso di Malaysia. Menurut Mahkamah Tinggi lagi, persoalan tersebut boleh mempengaruhi persoalan sama ada responden-responen tersebut boleh ditempatkan di syarikat-syarikat Esso lain di Malaysia (Lihat [1999] 1 LNS 199). Perayu merayu ke Mahkamah Rayuan. Mahkamah Rayuan dengan suara majoriti telah mengekalkan keputusan Mahkamah Tinggi atas alasan bahawa Mahkamah Tinggi betul dalam keputusannya bahawa terdapat isu serius yang perlu dibicarakan yang hanya boleh diputuskan oleh Mahkamah Perusahaan. (Lihat [2004] 1 CLJ 451).

B

C

D

E

F

Perayu kemudian memohon izin untuk merayu ke Mahkamah Persekutuan dan izin diberi untuk mereka berhujah atas persoalan-persoalan berikut:

G

- (1) Adakah Mahkamah Tinggi bertanggung untuk membuat pemeriksaan teliti terhadap fakta-fakta dan dokumen-dokumen yang dikemukakan di hadapan Menteri semasa membuat semakan kehakiman terhadap pelaksanaan budibicara Menteri di bawah s. 20(3) Akta tanpa mengira sama ada keputusan itu adalah untuk merujuk halperkara ke Mahkamah Perusahaan atau sebaliknya;
- (2) Adakah Mahkamah Tinggi betul apabila menyatakan bahawa Menteri bertanggung untuk merujuk halperkara ke Mahkamah Perusahaan di bawah s. 20(3) Akta selagi ia merasa bahawa terdapat isu fakta dan undang-undang yang memerlukan keputusan; dan

H

I

- A (3) Jika jawapan kepada (2) di atas berbentuk afirmatif, adakah Menteri dalam kes ini telah melaksanakan budi bicaranya dengan betul.

Diputuskan (menolak rayuan)

- B **Oleh Steve Shim HB (Sabah & Sarawak) menyampaikan penghakiman mahkamah:**

- C (1) Ungkapan “pemeriksaan teliti fakta-fakta” tidak menetapkan apa-apa standard universal. Ia juga bukan satu terma tegar. Ia bermaksud bahawa harus ada satu pemeriksaan yang objektif terhadap acuan fakta yang berada di hadapan Menteri bagi menentukan sama ada seorang yang munasabah, dalam keadaan yang serupa, akan mencapai keputusan yang sama seperti yang dicapai oleh Menteri. Pemakaian prinsip-prinsip yang dibentang di dalam kes *Associated Provincial Picture Houses Ltd v. Wednesbury Corp.* mengkehendaki supaya mahkamah melakukan penilaian atau pemeriksaan objektif terhadap fakta-fakta yang dikemukakan kepada Menteri pada waktu material. Soalan pertama, dengan itu, harus dijawab dalam konteks ini.
- D
- E (2) Sekiranya perkataan “merasa” dalam soalan kedua bermaksud suatu dapatan atau konklusi yang dicapai oleh Menteri berdasarkan fakta-fakta dan dokumen yang ada di hadapannya, maka, selagi beliau ada melakukan pemeriksaan objektif terhadap fakta-fakta dan dokumen tersebut selaras dengan prinsip-prinsip yang dinyatakan di atas, beliau adalah bertanggungjawab untuk merujuk representasi kepada Mahkamah Perusahaan. Representasi pula seharusnya berkaitan dengan dakwaan-dakwaan yang dibuat oleh pekerja bahawa mereka telah dibuang kerja tanpa sebab dan alasan yang sah. Ini jelas dari s. 20 Akta. Selain itu, isu serius fakta dan undang-undang mestilah ada kaitan dengan pemutusan pertikaian di antara majikan dan pekerja yang berbangkit dari representasi tersebut. Ianya mengikut bahawa jawapan kepada soalan kedua adalah dalam bentuk afirmatif.
- F
- G
- H (3) Dokumen-dokumen yang dieksibitkan sebagai “LAL 4” yang banyak mempengaruhi Menteri untuk melaksanakan budi bicaranya untuk merujuk representasi ke Mahkamah Perusahaan kelihatannya menunjukkan bahawa wujud pertalian di antara syarikat-syarikat Esso dan perayu. Mengambil kira senario ini, mungkin terdapat semacam satu persefahaman untuk menyerap atau menempatkan pekerja-pekerja perayu
- I

yang diberhentikan dalam keadaan-keadaan tertentu. Oleh yang demikian, keterangan oral atau dokumentari hendaklah dikemukakan untuk membuktikan ini. Inilah konteksnya di mana Mahkamah Tinggi memutuskan bahawa faktor pertalian telah membangkitkan satu isu yang perlu dibicarakan yang seharusnya dibicara dan diputuskan di Mahkamah Perusahaan.

(4) Satu lagi faktor yang mungkin mempengaruhi pemikiran Menteri adalah kewujudan perjanjian bersama sebagaimana yang terserlah dari eks. GHT11. Perjanjian bersama ini melibatkan perayu, syarikat-syarikat Esso dan kesatuan. Mungkin terdapat keperluan untuk menentukan tahap dan skop dokumen ini bagi menjelaskan pertalian sebenar di antara pihak-pihak tersebut. Sekali lagi, keterangan lisan adalah diperlukan.

(5) Jika satu bentuk hubungan korporat wujud di antara perayu dan syarikat-syarikat Esso, ini mungkin mencukupi untuk mencadangkan bahawa mungkin wujud persefahaman yang mengkehendaki perayu mengambil segala langkah-langkah munasabah untuk menempatkan semula atau menyerap semula responden-responden di mana-mana syarikat Esso di Malaysia dalam keadaan-keadaan tertentu. Walaupun terdapat keterangan dokumentari yang menunjukkan bahawa perayu telah cuba untuk menyerap semula responden-responden tersebut tetapi gagal, responden-responden kelihatan telah mempertikai percubaan sedemikian atau takat percubaan yang dibuat. Oleh itu, keterangan lisan dan dokumentari mengenainya hendaklah dikemukakan. Inilah konteksnya di mana Menteri merasakannya wajar untuk merujuk representasi ke Mahkamah Perusahaan. Ianya mengikut bahawa Menteri telah bertindak secara yang munasabah dan betul.

Case(s) referred to:

Ashbridge Investments Ltd v. Minister of Housing and Local Government [1965] 1 WLR 1320 (**refd**)

Harpers Trading (M) Sdn Bhd v. National Union of Commercial Workers [1991] 2 CLJ 881; [1991] 1 CLJ (Rep) 159 SC (**refd**)

Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan and Another Appeal [1997] 1 CLJ 665 CA (**refd**)

Malayan Banking Bhd v. Association of Bank Officers, Peninsular Malaysia & Anor [1988] 1 CLJ 276; [1988] 1 CLJ (Rep) 183 (**refd**)

Minister of Labour, Malaysia v. National Union of Journalists, Malaysia & Another Appeal [1991] 1 CLJ 31; [1991] 1 CLJ (Rep) 300 (**foll**)

A Legislation referred to:

Industrial Relations Act 1967, s. 20(1), (3)

For the appellant - Lim Heng Seng (Edward Saw with him); M/s Ng Yook Woon, Andrew TC Saw & Co

B *For the respondents - Dato' Mary Lim Thiam Suan (Amarjeet Singh with her)*
SFC

Reported by Usha Thiagarajah

JUDGMENT

C Steve Shim (CJ Sabah & Sarawak):

The Issues

D [1] On 23 March 2004, this court granted the appellant leave to appeal on 3 questions. Having regard to the issues raised therein, we find it necessary, for the sake of clarity, to reframe the questions as follows:

E (1) Is the High Court under a duty to conduct a meticulous examination of the facts and documents put before the Minister when it is judicially reviewing his exercise of discretion under s. 20(3) of the Industrial Relations Act 1967 (the Act) regardless of whether it is a decision to refer or not to refer the matter to the Industrial Court?

F (2) Is the High Court correct in stating that the Minister is obliged to refer the matter to the Industrial Court under s. 20(3) of the Act so long as he feels that there is a serious issue of fact and law which requires to be determined?

G (3) If the answer to (2) above is in the affirmative, has the Minister exercised his discretion correctly in the instant case?

The Background Facts

H [2] The 2nd, 3rd and 4th respondents (the said respondents) were industrial workers employed by the appellant at its terminal at South Port, Port Klang. The appellant was directed by the Selangor State Government to close its South Port terminal and to relocate its terminal operations to a "common-user" terminal at West Port, Pulau Lumut, owned and operated by a third party company. As a result of the closure and relocation, the said respondents became redundant. The appellant alleged that after consultation with the said respondents and their union and upon

I

terms agreed between the appellant and the union, the said respondents were retrenched and paid compensation pursuant to article 70 of the collective agreement. It is further alleged that the said respondents accepted the payments without protest. However, the said respondents considered themselves dismissed without just cause or excuse. They then lodged complaints to the Director-General of Industrial Relations under s. 20(1) of the Act. The matter could not be settled by the Director-General at the conciliatory stage and was thereafter referred to the Minister. Pursuant to s. 20(3) of the Act, the Minister in the exercise of his discretion, referred the matter to the Industrial Court for resolution. The appellant applied to the High Court for an order of *certiorari* to quash the Minister's decision. The High Court dismissed the application. The appellant then appealed to the Court of Appeal. That appeal was dismissed by a majority. Against that decision, the appellant sought leave to appeal before us. As we said, leave was granted.

Duty Of Reviewing Court

[3] It is the appellant's counsel's contention that in judicial review proceedings, a meticulous examination of the facts presented to the Minister must be conducted by the High Court as the reviewing court regardless of whether the Minister's decision was to refer or not to refer the matter to the Industrial Court under s. 20(3) of the Act. According to counsel, a contrary approach would lead to dual standards being imposed depending on whether the employer or the employee is applying for judicial review. In this regard counsel cites in support the following passage in the judgment of the Court of Appeal in *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan and Another Appeal* [1997] 1 CLJ 665 which states:

Thus, when a question arises as to whether the Minister has correctly exercised his discretion under s. 20(3) of the Act, it is the duty of a court to undertake a meticulous examination of the facts that were made available to the Minister. If the examination reveals that the representations under s. 20(1) are neither frivolous nor vexatious, a decision not to refer is liable to be quashed by *certiorari*.

Quite clearly, the Court of Appeal takes the view that the reviewing court is under a duty to conduct a meticulous examination of the facts placed before the Minister at the material time. There was much debate before us about the words

- A “meticulous examination of the facts.” In our view, there is no magic in the use of that phrase. It does not set any universal standard. It is not an inflexible term. It merely means that there should be an objective examination of the factual matrix available before the Minister in order to ascertain whether a reasonable person, similarly circumstanced, would have arrived at the decision which the Minister had done. The extent of that duty had been succinctly stated by Abdooleader SCJ in *Malayan Banking Bhd v. Association of Bank Officers, Peninsular Malaysia & Anor* [1988] 1 CLJ 183; [1988] 1 CLJ (Rep) 276 when he quoted, with approval a statement of Lord Denning HL in the case of *Ashbridge Investments Ltd v. Minister of Housing and Local Government* [1965] 1 WLR 1320 at p. 1326:

- D The court can only interfere on the ground that the Minister has gone outside the powers of the Act or that any requirement of the Act has not been complied with. Under this section, it seems to me that the court can interfere with the Minister’s decision if he has acted on no evidence; or if he has come to a conclusion to which on the evidence he could not reasonably come; or if he has given a wrong interpretation to the words of the statute; or if he has taken into consideration matters which he ought not to have taken into account or *vice versa*; or has otherwise gone wrong in law.

- F This dictum was cited with approval by the Supreme Court in *Harpers Trading (M) Sdn Bhd v. National Union of Commercial Workers* [1991] 2 CLJ 881; [1991] 1 CLJ (Rep) 159. It is clear that the court’s duty is reasonably extensive. It is within that broad spectrum that the then Supreme Court in *Minister of Labour, Malaysia v. National Union of Journalists, Malaysia & Another Appeal* [1991] 1 CLJ 31; [1991] 1 CLJ (Rep) 300 made the following pronouncement on the relevant principles to be applied:

- H The principles upon which an executive may exercise his discretion vested in him under any Act, particularly where the discretion is expressed in wide terms had been authoritatively laid down in many cases, notably in the celebrated case of *Associated Provincial Picture Houses Ltd v. Wednesbury Corp.* [1948] 1 KB 223 and quoted with approval by Hashim Yeop Sani CJ (Malaya) in *Minister of Labour, Malaysia v. Lie Seng Fan* [1990] 2 MLJ 9.

- I Therein, the Supreme Court took the position that our courts had since the case of *Wednesbury Corp.* (*supra*), consistently applied the basic legal principles laid down in that case as guidelines. The application of those principles would require the court to

undertake an objective appraisal or examination of the facts presented to the Minister at the material time. It is therefore in this context that the first question posed has to be answered.

Scope Of s. 20(3) Of The Act

[4] We turn to the second question which deals essentially with the scope of s. 20 of the Act but more specifically subsection (3) thereof. However, a holistic approach to the question necessitates a close look at the relevant provisions of the said section which stipulates:

20. Representations on dismissals

(1) Where a workman, irrespective of whether he is a member of a trade union of workman or otherwise, considers that he has been dismissed without just cause or excuse by his employer, he may make representations in writing to the Director-General to be reinstated in his former employment; the representations may be filed at the office of the Director General nearest to the place of employment from which the workman was dismissed.

(1A) The Director General shall not entertain any representations under subsection (1) unless such representations are filed within sixty days of the dismissal:

Provided that where a workman is dismissed with notice he may file a representation at any time during the period of such notice but not later than sixty days from the expiry thereof.

(2) Upon receipt of the representations the Director General shall take such steps as he may consider necessary or expedient so that an expeditious settlement thereof is arrived at; where the Director General is satisfied that there is no likelihood of the representations being settled, he shall notify the Minister accordingly.

(3) Upon receiving the notification of the Director General under subsection (2), the Minister may, if he thinks fit, refer the representations to the Court for an award.

Now, the question posed is whether the Minister is obliged to refer representations to the Industrial Court under s. 20(3) of the Act if he feels that there is a serious issue of fact and law to be determined. The word “feels” is subject to elucidation. If it means a finding or conclusion arrived at by the Minister on the basis of the available facts and documents before him, then so long as he has conducted an objective examination of those facts and documents in accordance with the legal principles discussed earlier,

- A the Minister is under a duty to refer the representations to the Industrial Court for resolution. It has to be noted that the representations must necessarily relate to the allegations made by the employees that they had been dismissed without just cause or excuse. This is implicit in s. 20 of the Act. Furthermore, the
- B serious issue of fact and law must have relevance to the resolution of the dispute between the employer and the employees arising from the representations. Given the reasons aforesaid, the answer to the second question postulated has to be in the affirmative.

C **Minister's Exercise Of Discretion**

- [5] This brings us to the third question, that is, whether in the instant case, the Minister had exercised his discretion correctly. The appellant's main reason for challenging the Minister's decision in the High Court was that the Minister had acted outside his
- D jurisdiction or without any jurisdiction. The High Court held that the representations made by the respondents could not be considered vexatious and frivolous as they raised a serious issue for determination concerning the relationship between the appellant and the Esso companies in Malaysia. It held that the Minister had
- E exercised his discretion correctly in referring the said representations to the Industrial Court. This decision was upheld by the Court of Appeal in its majority judgment essentially on the ground that the High Court was correct in holding that there was
- F a serious issue which could only be resolved by the Industrial Court. However, Abdul Aziz Mohamad JCA who dissented took the view that the representations made by the respondents had nothing in them; that the Minister had taken into account irrelevant considerations and failed to take into account matters which should have weighed on his mind.
- G

- [6] It seems clear that the central issue involves the question of whether the representations had raised a serious issue concerning the relationship between the appellant and the Esso companies in Malaysia which necessitated reference to the Industrial Court by the Minister. As we indicated earlier, the High Court took a
- H positive stance and the Court of Appeal agreed with it.

- [7] Before us, counsel for the appellant repeated the same arguments he canvassed before the High Court and the Court of Appeal. Essentially, he argued that there was no such corporate
- I relationship between the appellant and the Esso companies in Malaysia because the Esso companies were separate entities which were managed differently. In short, they were quite independent

of the appellant at all material times. However, there was a document exhibited as “LAL4” which apparently played a significant influence upon the Minister in exercising his discretion to refer the said representations to the Industrial Court. The High Court took cognizance of this fact. This is reflected in the following part of its judgment which states:

The serious issue that requires to be determined by the Industrial Court is the relationship between the Applicant company and Esso Malaysia Bhd. and other Esso Companies in Malaysia. The actual relationship between the Applicant and the Esso companies can only be determined if all the relevant documents such as the Memorandum and Articles of Association of each of the companies and also the collective agreements between the Union and the companies are produced and the provisions fully argued. This can only be done by calling at least a representative of the Applicant to give evidence and be subjected to the cross-examination by the Respondents. The Respondents must also be given the opportunities to bring in rebuttal evidence. This is a serious issue because it has bearing on whether the Respondents No. 2, 3 & 4 can be relocated in any of the other companies in Malaysia. As can be seen from the Affidavits produced by both parties, there exist disputing claims in respect of such relationship. Exhibit LAL-4 as seen by the Minister can give rise to such relationship whereby Respondents No. 2, 3 & 4 may be able to be relocated into the other Esso companies in Malaysia.

In the Court of Appeal, counsel for the appellant attempted to cast aspersions upon the relationship factor contending that for all intents and purposes the Esso companies and other affiliates were separate legal entities with which the appellant had no control whatsoever and therefore there was no connection at all between them. This contention was rejected by the Court of Appeal on the ground that the document exhibited as “LAL4” tended to show a contrary intention.

[8] Given its significance, it is therefore appropriate to take a closer look at this exh. “LAL4”.

Background to EssoChem Layoff

1. Esso Group of Companies comprises:

Esso Malaysia Bhd (EMB) – 65% Owned by Exxon Corp.
35% by Malaysia Esso Exploration Inc (EPMI) – 100%
Foreign Owned by Exxon Corp
Esso Chemicals Sdn Bhd (ECM) – 100% Foreign Owned by Exxon Corp

- A 2. Mgt managed to convinced the Union that a Multinational Company like Esso will never close shop. If need to close a section, they agreed to transfer workers to other affiliates within the Esso Group of Companies
- B 3. Examples of their sectional closure:
- 1988 – EMB Ammonia Plant was shutdown. About 34 EMB employees was transferred to EPMI which was another affiliates.
- C 1994 – EMB Port Klang Blending Plant was closed. About 35 employees were absolved in other EMB terminals.
- 1998 – EMB Senawang Distribution Plant will be shutdown. About 8 EMB employees will be transferred to other Plants.
- D 1998 – ECM retrenched 3 employers quoting that ‘we have made efforts ... but to no avail. It is for this reason, you have to be retrenched.’
- E 4. ECM at meeting with Union on 29/12/97 informed that they had no obligation to absorb the 3 ECM employees in other affiliates. They will not pay more than 20 days Wages for Redundancy.
- F 5. Other Affiliate, EMB there are:
- Esso Tasek Plant – 23 Industrial Workers working side by side with regulars for 15 years.
- Esso Refinery Port Dickson – 100 Industrial Workers in LPG Plant & Bulk Loading Area.
- G 6. ECM should make effort to absorb the 3 employees in Esso Tasek Plant or in Esso Refinery Port Dickson.
- H A perusal of the above document, in particular para. 1 therein, would seem to indicate that Esso Malaysia Bhd (EMB) was 65% owned by Exxon Corporation and Exxon Chemicals Sdn Bhd (the appellant) was 100% foreign owned by Exxon Corporation. This tends to suggest a connection between the Esso companies with the appellant. Given this scenario, there might well have been some understanding as to the absorption or relocation of
- I retrenched employees of the appellant in certain circumstances. That would not be an inconceivable supposition. As such, oral

and/or documentary evidence would need to be led to establish this. It was in this context that the High Court held that the relationship factor raised a triable issue which ought to be ventilated and resolved in the Industrial Court.

[9] Counsel for the appellant has also submitted that the appellant had, in accordance with the guidelines provided in the Code of Conduct for Industrial Harmony, made efforts to redeploy or relocate the said respondents with Esso companies. Even so, it still begs the question as to whether it was also due to the set-up between the Esso Companies and the appellant as we have described earlier. As we said, this was not entirely inconceivable having regard to the contents in the document exh. "LAL4". Thus, oral evidence would have to be led to resolve this. A further factor which could have weighed upon the mind of the Minister was the existence of a common collective agreement as reflected in exh. "GHT11". This collective agreement involved the appellant, the Esso Companies and the union. There may be a need to ascertain the extent and scope of this document in order to clarify the actual relationship between the parties concerned. Again, oral evidence would be required.

[10] If some form of corporate relationship, however tenuous, existed between the appellant and the Esso companies, this might well be sufficient to suggest that there was some understanding that the appellant should take all reasonable steps to redeploy or relocate the respondents with any of the Esso companies in Malaysia in certain circumstances. True, there was documentary evidence to show that the appellant made attempts to redeploy the said respondents but failed. The respondents appeared to have disputed this or at least the extent of the attempts involved. As such, both oral and documentary evidence would have to be led. It would therefore be in this context that the Minister had thought it fit to refer the representations to the Industrial Court. We are inclined to agree with him. We hold that the Minister had acted reasonably and correctly in doing so.

Conclusion

[11] For the reasons stated, the answer to the third question is again in the affirmative. That being the case, we find it appropriate to dismiss this appeal with costs. The deposit is to be paid out to the respondents to account of their taxed costs.